IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO. 3427 OF 2005.

Iqbal Ahmed Mohammad Sadiq Ansari...Petitioner.

V/s.

Haji Badurdaja Haji
Mohamad Ramzan ... Respondents.

Shri C.G. Gavnekar for the petitioner.

Shri P.N. Joshi for the respondents.

CORAM : V.C.DAGA, J.

DATED 23.11.2005.

P.C. :

. Heard learned Counsel for the petitioner.

2. Learned Counsel for the petitioner does not dispute that there were defaults during the pendency of the suit as well as during the pendency of the appeal. Learned Counsel for the petitioner further tried to contend that so far as ground of arrears of rent or default is concerned, the same was waived before the trial Court and, therefore, no appeal could have been preferred.

3. I was taken through the contents of the judgments wherein Counsel appearing for the landlord had after his submission left the issue of arrears of rent and/or default to the discretion of the Court for consideration, obviously, in accordance with law. This act of the Counsel can hardly be

said to be an act of waiver on the part of the petitioner- landlord to waive the ground of default in payment of rent by the tenant. The said reliance upon a judgment of the Apex Court in the case of **Mohan Laxman Hede vs. Noormohamad Adam Shaikh AIR 1988 SC 1111** is misplaced considering factual and admitted defaults in payment of rent. Petition is, thus, without any merit and the same is accordingly dismissed in limine with no order as to costs.

4. At this stage,learned Counsel for the petitioner seeks time to vacate the suit premises subject to furnishing usual undertaking. Learned Counsel appearing for the respondent fairly stated that he has no objection to grant time of 6 months, subject to furnishing usual undertaking and agreeing not to create 3rd party interests in the suit premises. In this view of the matter, petitioner is granted six months time to vacate the suit premises subject to furnishing usual undertaking within 2 weeks from today. Respondent not to execute the decree for six months, if undertaking as ordered is furnished within stipulated time frame.

5. Needless to mention that failure on the part of the petitioner to furnish usual undertaking within the period prescribed, it would be open for the respondent to execute the decree in accordance with law.